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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,167	06/26/2001	Andy L. Ruse	219.40066X00	1366

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EXAMINER

JOO, JOSHUA

ART UNIT PAPER NUMBER

2154

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/891,167

Applicant(s)

RUSE ET AL.

Examiner

Joshua Joo

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 03 October 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 13. Other: Applicant's arguments do not place the application in condition for allowance.

Applicant argued that (1) Merely monitoring for a response to a paged message is not equivalent of monitoring a locations of the responses. The cited sections of Lemelson do not specifically disclose "... monitoring locations of responses to incoming messages along with the time of day and day of week, " as specifically recited in independent claim 1; (2) the "access time" concept disclosed in Singh is clearly not equivalent of monitoring the time of day and day of week of responses to incoming messages as recited in the embodiment; and (3) There is not suggestion or motivation to combine Singh and Lemelson.

As to point (1), the teachings of Singh, US Patent #6,028,514 (Singh hereinafter) and the instant application are similar in that both teachings deal with locating and contacting users by determining the highest probability of contacting users based on a statistical trend analysis. The only difference between Singh and the instant application is that Singh monitors the location of access of messages to determine the probability of contacting the users while the instant application monitors the location of the responses of messages.

As mentioned above, Singh teaches of monitoring the location of access to incoming messages (Col 3, lines 19-21. "Subscriber agents 19 monitor the message status of each subscriber message including receipt, storage, and access of messages within each of their respective devices." Col 3, lines 30-31. Host server 10 may further maintain a record of each message sent to a subscriber and the access time and date."). The respective devices mentioned in line 21 may be a wireless communication device, an office computer, or a home computer (Col 2, lines 64-66), thus the devices are at different locations. In line 31, the system of Singh maintains a record of "access time and date", which clearly indicates that the system monitors messages with the time of day and day of week. Therefore, Singh teaches of monitoring the location of access to incoming messages to the time of day and day of week. The only difference between Singh and claim 1 is that Singh monitors the "access" to messages, while claim 1 claims of monitoring the "response" to messages. This deficit is taught by Lemelson, US Patent #6,028,514 (Lemelson hereinafter).

Lemelson teaches of monitoring the location of responses, as the monitor center determines the locations of the responses to paged messages (Col 16, lines 30-32, "The message transmitted via the paging network of FIG. 1 include G.P.S. coordinates of the received message..." Col 16, lines 57-58, "the monitor center 10 checks for responses to the paging message". The location of the user is determined in order to contact the user (Col 17, lines 1-4). Regardless of the type of message that is being send and from the user and method of determining the location, Lemelson nonetheless teaches the concept of monitoring the location of responses to messages as claimed by the Applicant, and therefore is taught in the art.

Singh establishes the importance of locating and contacing the user in the "Background of the Invention," "Timely receipt of notices can be vitally important in some circumstances... the subscriber will want to be notified at the time a particular stock of interest either reaches a predetermined high or low value" (Col 1, lines 10-20). The teachings of Singh and Lemelson may have different applicability, but both teachings are related in that they both teach of locating and contacting users, and the teachings of Lemelson to determine the location of the user based on the response of the message would increase the likelihood of locating the current location of the user and contacting the user. Therefore, Lemelson's teachings to monitor the location based on the response of messages would improve the teachings of Singh by providing a higher probability of locating and contacting the user to forward messages and provide timely receipt of messages.

As to point (2), Singh teaches of monitoring the "access time and date" in column 3, line 31, which the Examiner interprets as the equivalent of monitoring the time of day and day of week, as "time" would indicate the time of day, and "date" would indicate the day of week. Singh does not teach of monitoring the response to the time of day and day of week. However, see response to point (1) above.

As to point (3), the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for combining may be found in both teachings of Singh and Lemelson. Singh teaches the importance of timely receiving messages, and therefore teaches the method of forwarding messages to users based on the highest probability. The probability of contacting a user may be increased by combining the teachings of Lemelson to monitor the location of the response of messages because the location of the response of messages would provide the current location of the user, thereby improving the probability of determining the correct location of the user.